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No. 06-918

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

BRADLEY S. LOGAN, M.D.,

Petitioner,

v.

HCA INC. *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENTS HCA INC.; GALEN OF FLORIDA, INC. D/B/A ST. PETERSBURG GENERAL HOSPITAL; HTI MEMORIAL HOSPITAL CORPORATION D/B/A SKYLINE MEDICAL CENTER; DR. DAVID DESPER; DAN FRIEDRICH; DR. AKSHAY DESAI; DR. GEORGE BANKS; ROSEMARY NORTHRUP-BLOOMFIELD; HEALTH SERVICES (DELAWARE), INC.; DANEIL MCAULIFFE; OGDEN & SULLIVAN, P.C.; ROBERT KLEIN; DR. GREGORY NEAL; DR. DAVID MCKEE; DR. LLOYD WALWYN; KELLY DUGGAN; C.J. GIDEON; BRANDY BURNETTE; GIDEON & WISEMAN, PLLC; TRISTAR HEALTH SYSTEMS; STEVEN RILEY; AMY KURZWEG; AND BOWEN, RILEY, WARNOCK & JACOBSON, PLC

ROBERT J. WALKER
Counsel of Record
SARA F. REYNOLDS
WALKER, TIPPS & MALONE
150 Fourth Avenue North, Suite 2300
Nashville, Tennessee 37219
(615) 303-6000

Counsel for HCA-Affiliated Respondents

206478

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

I. Whether Petitioner has presented compelling reasons to grant the Petition, where the Sixth Circuit's Opinion affirming the District Court's dismissal of Petitioner's claim pursuant to 42 U.S.C. § 1983 does not conflict with a decision of this Court or a Court of Appeals, and where Petitioner does not claim that the Sixth Circuit's ruling implicates an important federal question that has not been settled by this Court.

II. Whether Petitioner has presented compelling reasons to grant the Petition, where the Sixth Circuit's Opinion affirming the District Court's dismissal of Petitioner's claim pursuant to the Health Care Quality Improvement Act, 42 U.S.C. § 11101, *et seq.*, does not conflict with a decision of this Court or a Court of Appeals, and where all courts that have addressed the issue have held that the HCQIA does not create a private cause of action for aggrieved physicians.

III. Whether Petitioner has presented compelling reasons to grant the Petition, where the Sixth Circuit's Opinion affirming the District Court's dismissal of Petitioner's claim pursuant to 18 U.S.C. §§ 1961-1968 does not conflict with a decision of this Court or a Court of Appeals, and where Petitioner does not claim that the Sixth Circuit's ruling implicates an important federal question that has not been settled by this Court.

CORPORATE DISCLOSURE STATEMENT

Respondent HCA Inc. does not have a parent corporation. Two affiliates of Merrill Lynch, a publicly traded company, together own more than 10% of HCA Inc. stock.

HCA Inc. is the ultimate parent corporation of Respondents Galen of Florida, Inc. d/b/a St. Petersburg General Hospital, HTI Memorial Hospital Corp. d/b/a Skyline Medical Center; Health Services (Delaware), Inc., and Tristar Health Systems.

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I

INTRODUCTION

Petitioner has not presented any compelling reasons for this Court to grant the Petition for Writ of Certiorari. The District Court and Court of Appeals correctly held, pursuant to Federal Rule of Civil Procedure 12(b)(6), that Petitioner failed to state a claim for violations of the Civil Rights Act, Health Care Quality Improvement Act, and Racketeering and Corrupt Organizations Act. Neither the District Court nor the Court of Appeals issued an opinion in conflict with a decision of this Court or addressing an important federal question that has not been decided by this Court.

STATEMENT OF THE CASE

Petitioner Bradley S. Logan, M.D., ("Logan") filed this lawsuit asserting various claims, including fraud, suppression, civil conspiracy, negligence, wantonness, breach of contract, abuse of process, RICO violations, due process violations, and a cause of action pursuant to the Health Care Quality Improvement Act ("HCQIA"). (R. 1, Complaint; Joint Appendix ("JA") 17-95). Logan filed his 79-page complaint on January 5, 2005, against HCA Inc. ("HCA") and several of its subsidiaries, affiliated hospitals, affiliated employees, affiliated physicians, and agents of its affiliates, as well as several law firms and attorneys who, at one point or another, represented one of the related entities. The complaint requests $250 million in compensatory damages and $2.25 billion in punitive damages. (R. 1, Complaint p.74; JA 80).

The sequence of events set forth in the complaint begins in St. Petersburg, Florida, where Logan, a physician, was a provisional member of the medical staff at St. Petersburg

General Hospital in 1997. (R. 1, Complaint, Facts ¶ 1; JA 27). Logan resigned his clinical privileges in August 1997 as a result of the Quality Improvement Subcommittee's review of the care Logan had provided to certain patients at St. Petersburg General. (R. 1, Complaint, Facts ¶ 5; JA 29). Logan alleges that St. Petersburg General, Dr. Banks, Dr. Desai, Dr. Desper, Dan Friedrich, Rosemary Northup-Bloomfield, Daneil McAuliffe, and Ogden & Sullivan (collectively the "St. Petersburg Defendants") engaged in wrongful conduct surrounding the peer review of Logan's practice, Logan's resignation, and the subsequent reporting of Logan's resignation to the National Practitioner Data Bank and Florida Agency for Health Care Administration. (R. 1, Complaint, Facts ¶ 1-9; JA 27-31).

In addition, Petitioner alleges that several of the St. Petersburg Defendants caused a breach of the office lease agreement between Columbia-Pinellas and Group Medica of Florida, Logan's professional corporation. (R. 1, Complaint, Facts ¶ 9; JA 31). A judgment was rendered against Group Medica in Florida state court. (R. 1, Complaint, Facts ¶ 82; JA 68). On October 23, 2003, Health Services (Delaware), Inc. d/b/a Columbia-Pinellas ("Columbia-Pinellas") filed an action in Tennessee Chancery Court seeking to enforce the Florida judgment against Logan by piercing the corporate veil. (R. 1, Complaint, Facts ¶ 82; JA 68). Steve Riley and Amy Kurzweg of the law firm Bowen, Riley, Warnock & Jacobson (collectively the "Bowen Riley Defendants"), named defendants in this action, represented Columbia-Pinellas in the Tennessee Chancery action. (R. 1, Complaint, Facts ¶ 82; JA 68).[1] Logan alleges that the attorneys' conduct

[1] The Chancery Court action is now complete. Columbia-Pinellas was not able to pierce the corporate veil and enforce the judgment against Logan.

constitutes an abuse of process, civil conspiracy, and violations of the Racketeer Influenced and Corrupt Organizations ("RICO") Act.

After his resignation in 1997 from the staff of St. Petersburg General Hospital, Logan moved to Lawrenceburg, Tennessee and began a practice at Crockett General Hospital, another HCA affiliate, on March 1, 1998. (R. 1, Complaint, Facts ¶ 11; JA 32). Logan alleges that Jack Buck, Marjorie Nix, Dr. Virgil Crowder, Dr. Penny Mediate, and Lifepoint Hospitals, Inc. (collectively the "Crockett Defendants") wrongfully misrepresented information regarding the practice characteristics in Lawrenceburg and the hospital's plans to build a Women's Center, hired another obstetrician/ gynecologist (Dr. Huckaby), conducted an outside chart review of Logan's cases, encouraged Dr. Huckaby to leave her partnership with Logan, and conducted a chart review of Logan's cases within the hospital's Performance Improvement Committee. (R. 1, Complaint, Facts ¶ 11-24; JA 32-36). Due to perceived "economic pressures" and the Crockett Defendants' alleged refusal to help address those pressures, Logan decided to leave Lawrenceburg effective January 2002. (R. 1, Complaint, Facts ¶ 25-26; JA 36-38). Lifepoint Hospitals, Inc., (which had acquired Crockett General Hospital from an HCA affiliate) served Logan with a notice of intent to arbitrate a breach of contract dispute in April 2002. (R. 1, Complaint, Facts ¶ 26; JA 37-38).

On September 24, 2001, Logan submitted an application for clinical privileges at Skyline Medical Center ("Skyline"), an HCA-affiliated hospital located in Nashville. (R. 1, Complaint, Facts ¶ 30; JA 39). On November 9, 2001, Logan entered into a recruiting agreement with Skyline. (R. 1, Complaint, Facts ¶ 31; JA 39). On December 13, 2001, the

Skyline Credentials Committee met and considered Logan's application for privileges, and Logan was requested to appear for an interview at the committee's February 28, 2002, meeting. (R. 1, Complaint, Facts ¶ 33, 37; JA 39, 40). Logan alleges that Skyline wrongfully gathered and considered information, some of which was allegedly false, regarding his practice history at St. Petersburg and Crockett. (R. 1, Complaint, Facts ¶ 34-41; JA 39-42). Logan met with the Skyline Credentials Committee on February 28, 2002, and the committee voted not to recommend his application for privileges. (R. 1, Complaint, Facts ¶ 42; JA 42). On March 4, 2002, Logan withdrew his application for privileges at Skyline. (R. 1, Complaint, Facts ¶ 43; JA 42).

On August 9, 2002, Logan submitted a second application for privileges to Skyline. (R. 1, Complaint, Facts ¶ 51; JA 44). On November 7, 2002, Logan met with C.J. Gideon, an attorney hired by Skyline to investigate Logan's application for privileges. (R. 1; Complaint, Facts ¶ 54-55; JA 45-46). Mr. Gideon discussed documents regarding Logan's residency training at the University of Calgary during that meeting. (R. 1, Complaint, Facts ¶ 55; JA 46). On December 12, 2002, the Skyline Credentials Committee met, considered Logan's second application for privileges, and questioned Logan. (Complaint, Facts ¶ 57, 59; JA 46-47). On January 7, 2003, the Skyline Medical Executive Committee met to consider Logan's second application for privileges. (R. 1, Complaint, Facts ¶ 61; JA 47-48). Logan was informed on January 10, 2003, that the MEC recommended his second application for privileges be denied. (R. 1, Complaint, Facts ¶ 66; JA 49). Logan alleges that the meetings of the Skyline Medical Executive, Hearing, and Credentials Committees were unfair, biased, and failed to comply with various laws. (R. 1, Complaint, Facts ¶ 57-67; JA 46-50).

On January 15, 2003, Logan requested a formal hearing on his application for privileges. (R. 1, Complaint, Facts ¶ 68; JA 50). Skyline held the hearing on May 19, 2003. (R. 1, Complaint, Facts ¶ 74; JA 52). Logan alleges that the hearing, and events leading thereto, were once again unfair and biased, and that Mr. Gideon, Brandy Burnette, Dr. David McKee, Robert Klein, Dr. Gregory Neal, Kelly Duggan, and Dr. Lloyd Walwyn (collectively the "Skyline Defendants) engaged in misrepresentations and other wrongful conduct during the course of the hearing and committee meetings. (R. 1, Complaint, Facts ¶¶ 69, 70-72, 74; JA 50-65).[2] On July 7, 2003, the Skyline Medical Executive Committee met and voted to accept the Hearing Committee's recommendation to deny Logan's second application for privileges. (R. 1, Complaint, Facts ¶ 77; JA 66). On July 10, 2003, Logan sent Mr. Klein a letter purporting to withdraw his second application for privileges. (R. 1, Complaint, Facts ¶ 78; JA 66). Logan claims that Skyline and Mr. Klein thereafter wrongfully entered a report with the National Practitioner Data Bank stating that Logan's application for privileges had been denied. (R. 1, Complaint, Facts ¶ 80; JA 67).

On January 5, 2005, Logan commenced this lawsuit by filing his complaint in the United States District Court for the Middle District of Tennessee. (R. 1, Complaint; JA 17). Petitioner generally alleges that the Defendants, by and through their various wrongs and breaches of his Constitutional and statutory rights, engaged in a fraudulent scheme to ruin his professional image as a physician and

[2] The complaint contains more than one set of paragraphs numbered 71, 72, and 74. This cite refers to the first set of paragraphs identified in the Complaint as Paragraphs 71, 72 and 74.

thwart his ability to practice medicine. (R. 1, Complaint; JA 17-95). The Defendants filed motions to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). (R. 37, 45, 46, 47, 48, 49, 50, 52, 56, 57, 61; JA 151, 174, 182, 202).

The motions were referred to the Magistrate Judge and heard on April 12, 2005. (R. 81). On May 23, 2005, the Magistrate Judge issued a Report and Recommendation, finding that Logan's federal claims failed to state a claim on which relief could be granted, and recommending that the remaining state law claims be dismissed for lack of jurisdiction. (R. 85, Report and Recommendation; JA 221). Logan filed objections Report and Recommendation. (R. 86, Objections by Plaintiff to Report and Recommendation; JA 231). The District Court subsequently entered a Memorandum and Order adopting the Magistrate Judge's Report and Recommendation and dismissing Logan's claims with prejudice. (R. 90, 91, Memorandum and Order; JA 247, 261).

On December 30, 2005, Petitioner timely filed a Notice of Appeal of the District Court's decision to the United States Court of Appeals for the Sixth Circuit. (R. 92, Notice of Appeal; JA 262). On appeal Logan argued that (1) hospital peer review activities constitute action under color of state law, (2) the Health Care Quality Improvement Act creates Constitutional due process rights, and (3) the Defendants' actions in mailing or otherwise disseminating physician peer review committee results constitute a cognizable cause of action under the federal RICO statute. In a decision issued on October 5, 2006, the Court of Appeals held that (1) Logan failed to assert facts sufficient to rise to the level of state

action or to state a cognizable claim pursuant to 42 U.S.C. § 1983, (2) the Health Care Quality Improvement Act ("HCQIA"), 42 U.S.C. § 11101, *et seq.*, does not create a private right of action for aggrieved physicians, and (3) Logan failed to assert facts sufficient to state a claim for violation of the RICO statute, 18 U.S.C. §§ 1961-1964.

REASONS FOR DENYING THE PETITION

The decisions below do not conflict with a decision of this Court or any Court of Appeals nor do they implicate an important federal question that has not been decided by this Court. Accordingly, Petitioner has failed to carry his burden of demonstrating any compelling reasons for the Petition to be granted. *See* Sup. Ct. R. 10.

I. Petitioner's allegations of conduct on the part of the Respondents fail to rise to the level of state action necessary to state a claim pursuant to 42 U.S.C. § 1983.

Petitioner alleges that various defendants violated his Constitutional due process rights under 42 U.S.C. § 1983 by failing to provide him with fair peer review hearings and submitting false reports to the National Practitioner Data Bank and the Florida Agency for Healthcare Administration. (R. 1, Complaint, Count Nine p. 70; JA 86). Logan's allegations of due process violations fail to state a claim upon which relief can be granted.

This Court has recognized that:

> [N]othing in the language of the Due Process Clause itself requires the State to protect the life,

> liberty, and property of its citizens against invasion by private actors. The Clause is phrased as a limitation on the State's power to act, not as a guarantee of certain minimal levels of safety and security.

DeShaney v. Winnebago County Dept. of Social Services, 489 U.S. 189, 196 (1989). Indeed, "it is axiomatic that constitutional due process protections do not extend to 'private conduct abridging individual rights.'" *Davis v. Prudential Securities, Inc.*, 59 F.3d 1186, 1190 (11th Cir. 1995). Therefore, to assert an actionable claim under § 1983 against a non-governmental defendant, the plaintiff must demonstrate that there is a sufficient nexus between the state and the individual defendant to justify treating the conduct as "state action." *Id.* at 1191.

Logan has failed demonstrate state action in this case, and the decisions of the District Court and Sixth Circuit were correct applications of the law. Furthermore, contrary to the arguments set forth in the Petition, the decision of the Court of Appeals does not conflict with a decision of this Court or any Court of Appeals. There is no authority to support Petitioner's position that the peer review actions of a private hospital constitute state action for purposes of § 1983.

Petitioner argues that the Respondents' actions pursuant to the HCQIA and relevant peer review statutes constitute the requisite state action necessary to state a § 1983 claim. The HCQIA is a federal statute, not a state statute. Conduct pursuant to a federal statute cannot form the basis for a § 1983 action. *Ana Leon T. v. Federal Reserve Bank of Chicago*, 823 F.2d 928, 981 (6th Cir. 1987).

Petitioner's arguments with regard to the state peer review statutes are equally without merit. This is not a case where the activities of the state and the private entity are so closely entwined as to be the same. The cases cited in the Petition fail to support Logan's position, and the clear weight of authority holds that non-governmental hospitals and their employees are not state actors as a matter of law. *See, e.g.*, *Sarin v. Samaritan Health Center*, 813 F.2d 755, 759 (6th Cir. 1987) (in action relating to revocation of physician's privileges, no state action even though hospital licensed by the state and received federal funds); *Crowder v. Conlan*, 740 F.2d 447, 449-453 (6th Cir. 1984) (hospital not a state actor even when public officials sit on its board); *Jackson v. Norton-Children's Hosps., Inc.*, 487 F.2d 502, 503 (6th Cir. 1973) (private hospital's action in discharging a physician was not state action within the meaning of Section 1983); *Pinhas v. Summit Health Ltd.*, 894 F.2d 1024 (9th Cir. 1989) (holding that hospital's peer review process did not constitute state action); *Jeung v. McKrow*, 264 F. Supp. 2d 557, 571 (E.D. Mich. 2003) (in suit brought by physician, hospital and its administrators were not state actors within the meaning of Section 1983); *Canady v. Providence Hospital*, 903 F. Supp. 125, 127 (D.D.C. 1995) ("A decision to restrict staff privileges does not constitute state action."); *Freilich v. Board of Directors of Upper Chesapeake Health, Inc.*, 142 F. Supp. 2d 679 (D. Md. 2001).

Petitioner incorrectly cites *Nicholas v. North Colorado Medical Center, Inc.*, for the proposition that peer review committees are state actors. *See* (Petition at 9); *Nicholas v. North Colorado Medical Center, Inc.*, 902 P.2d 462 (Colo. Ct. App. 1995). The committee at issue in that case was one formed by the state Board of Medical Examiners to monitor anticompetitive conduct. *Id.* at 464. It was cloaked with the

authority of the state by the specific language of the statute. Colo. Rev. Stat. § 12-36.5-103. The statutes at issue in this case contain no such language.

The language of the Tennessee and Florida peer review statutes undermines Petitioner's claim of state action on the part of the Respondents. The statutes encourage medical providers to engage in candid, thorough, and critical reviews of their peers, creating certain immunities for persons who serve on peer review committees. Fla. Stat. ch. 395.0193; Tenn. Code Ann. § 63-6-219. *Id.* The Florida and Tennessee state legislatures do not direct or oversee the evaluation or decision-making process, and the statutes provide no basis for Petitioner's allegation of state action.

The fact that a minority of states permit judicial review of peer review decisions does not make the hospital committees state actors. *See Jackson v. Metro. Edison Co.*, 419 U.S. 345, 351 (1974) (The mere fact that a business is subject to state regulation does not by itself convert its action into that of the State for purposes of the Fourteenth Amendment"). None of the cases cited by Petitioner support his position to the contrary. *Hawkins v. Kinsey*, cited in the Petition, actually undermines Logan's argument. The court in that case stated that while "the hospitals serve the general public, this factor, standing alone, does not make them public agencies." 540 P.2d 345, 348 (Colo. Ct. App. 1975) (not selected for official publication). The *Feyz v. Mercy Memorial Hospital* decision cited at length in the Petition was vacated on appeal. *Feyz v. Mercy Memorial Hosp.*, 719 N.W.2d 1 (Mich. 2006). The Michigan Supreme Court declined to address whether the hospital was subject to the civil rights statutes. *Id.* at 16.

Logan has clearly failed to demonstrate state action on the part of the Respondents, and there is no compelling reason for the Petition to be granted.

II. Petitioner has no private cause of action under the Health Care Quality Improvement Act.

Petitioner asserted independent claims against various Respondents pursuant to the Health Care Quality Improvement Act of 1986, 42 U.S.C. § 11101, *et seq.* ("HCQIA"). (R. 1, Complaint, Count Ten, p. 72; JA 88). The HCQIA was enacted in order to "shield health care entities and individual physicians from liability for damages for actions performed in the course of monitoring the competence of health care personnel." *Singh v. Blue Cross/Blue Shield of Massachusetts*, 308 F.3d 25, 31 (1st Cir. 2002).

While this Court has not yet spoken on the issue, every court presented with an aggrieved physician asserting a claim under HCQIA has held that HCQIA does not create a private right of action. *Brown v. Medical College of Ohio*, 79 F. Supp. 2d 840, 844-45 (N.D. Ohio 1999); *see also Singh*, 308 F.3d at 45; *Wayne v. Genesis Medical Center*, 140 F.3d 1145, 1148 (8th Cir. 1998); *Hancock v. Blue Cross-Blue Shield of Kansas, Inc.*, 21 F.3d 373, 374 (10th Cir. 1994); *Morris v. Emory Clinic, Inc.*, 402 F.3d 1076, 1083 (11th Cir. 2005). There is nothing in the legislative history or language of the statute to support Petitioner's claim. Because there is no private right of action under HCQIA, Logan's claim for violations of HCQIA fails to state a claim upon which relief may be granted. There is no compelling reason to grant the Petition with respect to the HCQIA claim. The decision of the Sixth Circuit is not only not in conflict with any opinion of this Court or any other Court of Appeals, but it is in line with decisions of other Courts of Appeal.

III. Petitioner's Complaint fails to state a claim for RICO violation.

Petitioner alleges that the various Respondents violated the RICO Act by conspiring to commit fraud, breach contracts, violate the HCQIA, and to publicize stigmatizing statements. (R. 1, Complaint, Count Eight, p. 67; JA 83). The District Court held that Petitioner failed to allege wrongful acts that qualified as racketeering activity. (R. 85, Report and Recommendation; JA 228). The District Court also found that Petitioner failed to allege fraud with the required specificity. (R. 90, Memorandum; JA 259). The Sixth Circuit held that "Logan's allegations do not establish that the defendants formed an enterprise as defined by RICO." Petitioner's RICO Act claim is essentially a summary of his other claims, with an additional allegation that the Respondents' conduct violates 18 U.S.C. § 1861, *et seq.* (*See* R. 1, Complaint, Count Eight, p. 67; JA 83). The allegations of the complaint are insufficient to state a RICO Act claim upon which relief can be granted.

In order to state a claim under RICO, a plaintiff must plead the following elements with specificity: "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985). A general allegation of racketeering or the perpetration of fraud is insufficient to establish a RICO Act claim. *See Howard v. America Online, Inc.*, 208 F.3d 741, 748-49 (9th Cir. 2000). Furthermore, a RICO Act complaint alleging fraud must state with particularity (1) the false statement made by the defendant, (2) which the plaintiff relied on, and (3) the facts demonstrating the plaintiff's reliance on the defendant's false statement of fact. *Blount Financial Service v. Walter E. Heller & Co.*, 819 F.2d 151 (6th Cir.

1987). In addition to alleging the particular details of a fraud, "the plaintiff must allege facts that give rise to a strong inference of fraudulent intent." *First Capital Asset Management, Inc. v. Satinwood, Inc.*, 385 F.3d 159, 179 (2d Cir. 2004).

Petitioner failed to plead with particularity the necessary elements to state a claim under the RICO Act. The Complaint consists merely of generalized allegations of fraud without any showing that a material fact was misrepresented to Logan.[3] Logan has also failed to demonstrate that the acts alleged are indictable. "Citing acts as part of a RICO pattern, without proving that they are indictable, is not sufficient." *Howard v. America Online, Inc.*, 208 F.3d 741, 748 (9th Cir. 2000).

In addition to the deficiencies relied upon by the District Court and Sixth Circuit, Petitioner failed to allege any reliance on the communications enumerated in the Complaint. The Complaint generally alleges that Respondents committed mail and wire fraud by publishing various "stigmatizing statements" about Petitioner. The majority of these communications were sent to third parties. (*See* Petition at 24-26). Rather than exercising reliance on these statements, Logan claims to have disputed them and proclaimed their falsity as soon as he heard them. Such action is the opposite of reliance.

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[3] The Appendix to the Complaint, set forth in the Petition, which supposedly itemizes the acts of mail and wire fraud is merely a list of communications. It does not specify the substance of the communications, nor does it demonstrate any of the elements of a cause of action pursuant to the RICO Act. (*See* Petition at 21-26).

The holdings of the District Court and Sixth Circuit were correct. Petitioner failed to state a valid RICO claim, and there is no compelling reason for this Court to grant the Petition.

CONCLUSION

Petitioner has not established any compelling reasons for this Court to grant the Petition. Therefore, Respondents respectfully request that the Petition be denied.

Respectfully submitted,

ROBERT J. WALKER
Counsel of Record
SARA F. REYNOLDS
WALKER, TIPPS & MALONE
150 Fourth Avenue North, Suite 2300
Nashville, Tennessee 37219
(615) 303-6000
Counsel for HCA-Affiliated Respondents